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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,210	08/06/2001	Christopher Randall Beharry	8195M	8980

27752 7590 01/24/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/923,210

Applicant(s)
Beharry

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 6, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:

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1. Claims 4, 14 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is vague and indefinite. What does applicant mean by 50-250ml of food bits? Food bits are solid particles; thus, how are they measured by ml?

Claim 14 has the same problem as claim 4.

Claim 21 has the same problem as claim 4.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al(5667838) in view of Brabbs(4596714) and the Jif recipes.

Wong et al disclose nut spreads having relatively low viscosity, reduced stickiness and increased nut flavor intensity. The nut spread is made from nut solids and fat/oil, plus other ingredients such as nut butter stabilizers, flavorants, bulking agents etc... Nut chunks, flavored or candied bits and other optional components can be included in the nut spreads at various levels. The other components include chocolate chips, butterscotch, peanuts, jellies, praline nuts or other candies. The nut spreads comprise up to about 15% stabilizer. (See columns 4-8)

Wong et al do not disclose forming a snack bar comprising the nut spread and the properties as claimed.

The Jif recipes disclose various peanut butter recipes including peanut butter bar such as "No Bake Peanut Butter Bars".

Brabbs discloses a peanut butter-filled snack product. Brabbs teaches peanut butter ordinary comprises from 1-5% stabilizer. (See col. 3)

It is obvious that the Wong et al disclosure encompasses super stabilized nut spread because they disclose up to 15% stabilizer can be added while Brabbs teaches nut spread ordinary comprises 1-5% stabilizer. When more than the ordinary amount of stabilizer is added, it is obvious the nut spread is a super stabilized nut spread and will have the penetration value and density as claimed. It would also have been obvious to use the Wong et al nut spread in a snack bar such as the one shown by the recipes to obtain the benefits of reduce stickiness and increased

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nut flavor intensity. When the nut spread is used to make snack bar, it is obvious the bar will have the Bar Strength as claimed because the same material is used. It would also have been obvious to enrobe snack bar with a confectioner's material to obtain different flavoring; this is well known in the art. As to the amount of nut spread, it would have been obvious to use varying amounts of nut spread depending on the flavor intensity desired. If it is desired to have strong nut flavor, it would have been obvious to use a large amount of nut spread. The same is true with adding food bits to the bar; the amount can vary depending on the taste and flavor desired.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dally et al disclose shelf-stable bar with crust and filling.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

January 21, 2003


LIEN TRAN
PRIMARY EXAMINER
